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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN - 5 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90 of the Commission's) PR Docket No. 93-144
Rules to Facilitate Future Development of) RM-8117, RM-8030,
SMR Systems in the 800 MHz Frequency Band) RM-8029

and

Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding) PP Docket No. 93-253
800 MHz SMR)

To: The Commission

COMMENTS

Supreme Radio Communications, Inc. ("Supreme"), by and through counsel hereby comments to the above captioned matter, requesting that the Commission summarily reject the proposals as inequitable, unworkable, and detrimental to the public interest. In support of its comments, Supreme states the following:

Supreme is an independent operator of SMR trunked facilities, serving the public in the Peoria, Illinois area, providing service to many individuals, companies and public safety consumers. Accordingly, Supreme's instant comments arise out of its intense interest in the matters treated within this docket and its desire to continue to serve its customers with quality, cost efficient service. The Commission's proposals threaten Supreme's ability to continue to serve the public and invite marketplace abuses, not directly considered within the text of the FNPRM.

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Supreme opposes vigorously any attempt to allow large, publicly-traded ESMR companies to force frequency swaps or migration upon the Country's independent operators. The ESMR companies already enjoy many advantages not offered to independent operators, which are the result of the Commission's largesse contained in the terms associated with the grant of ESMR waivers. Liberal loading requirements, though vexing, are the least of these advantages. Perhaps of greater disruption is the ability to devise frequency reuse plans and associated engineering exhibits that, in effect, absorb every and all available SMR channels within large geographic regions. For example, Nextel, Inc. has pending before the Commission a series of applications which propose use of 529 of the 600 available 800 MHz band channels throughout an area that extends from north of San Francisco to the Mexican border. These ESMR footprints propose use of spectrum for which no demand may be shown and no population base exists for support of such proposals. Still, the Commission has granted numerous of these requests.

The effect of these ESMR systems is the stifling of the growth of local SMR facilities, to the detriment of independent operators and their subscribers. The warehouse of spectrum created by these systems does nothing to forward the Commission's mandate to bring viable service to the public and instead, only forwards the private agenda of publicly-traded corporations looking to add book value to their securities. Although these maneuvers have resulted in the sale of billions of dollars of stocks and bonds, the Commission must be extremely disappointed in the paucity of service which has been offered to the public arising out of grant of these waivers.

If the Commission, however, does not consider it expedient to rectify the environment which its somewhat misguided, albeit good intentioned, acts and policies have created within the SMR industry, the Commission should, at the least, refuse to further upset the apple cart by providing additional, undeserved advantages to ESMR operators.

Forced frequency swapping tops the list of poorly considered proposals contained within the FNPRM. The effects of allowing any forcing of frequency exchange or migration would be disastrous for independent operators, who would find themselves at the mercy of ESMR operators' business strategies. Were there any concurrent benefit to independent operators or to the public they serve, such a proposal might have a modicum of merit. Yet no such benefit can be shown and none exists. Instead, the proposal is an obvious attempt to reshuffle the deck after the hand is dealt. The fact that traditional SMR operators have anted up, paid to stay in the game for over twenty years, and are now being threatened by new, upstart players, is most unfortunate.

Nextel Communications, Inc.'s desire for contiguous spectrum is apparent. Its request is rooted in two problems: its long suffering inability to operate its systems as promised and its desire to create fiefdoms of spectrum allocation within major U.S. markets. As for the first motivating factor, it is strictly of Nextel's own making and any resulting effect, positive or negative, should be allowed to occur based on Nextel's choices of equipment, design, and service offering. Nothing within the Commission's mandate requires the federal government to provide any relief to Nextel and no

appreciable segment of the telecommunications consuming public would suffer by denial of Nextel's bold request. The second factor is a bald attempt by Nextel to engage in anti-competitive behavior, requesting regulatory absolution for its plan to diminish all competition within the SMR industry. Such a proposal flies in the face of the Commission's mandate to regulate in a manner which promotes competitiveness in the marketplace, eschewing corporations' attempts to so dominate the market that reasonable competition is not allowed to exist.

More than tangential to the Nextel machination to obtain by force or fiat contiguous spectrum, despite the obvious injury to the market and independent operators, is the proposal to create market-based licensing within MTAs. This proposal, though not as repugnant as forced frequency swapping, is still a bald attempt to create a fully consolidated market for the offering of ESMR services. The Commission's laudable attempt to restrain this effort by proposing fifty channel blocks, rather than the incredible 200-channel block requested by Nextel, is nonetheless insufficient to forestall the mischief that would be visited upon the SMR market and the public it serves following adoption of this proposal.

Nextel has already gained market dominance through massive application filings (from which few facilities have actually been constructed) and frequency buy-outs (which according to its Chairman were done often under threat of economic harm to local operators) and liberal employment of short-spacing (despite the fact that these applications often fail to reflect more than an extension of its spectrum warehousing

methods) and corporate mergers (which, in accord with the effect on Nextel's stock prices, are not fully supported by financial markets). Despite its voracious appetite for spectrum and its bald attempts at consolidation of the market, Nextel is not yet content. It comes now before the Commission requesting MTA based licensing as a further method of tightening its grip on the SMR market. This proposal is lofted in the name of regulatory parity with cellular operators, for which Nextel is not entitled and which is contrary to the regulatory regimen under which the SMR market has been constructed.

Nextel's vision of regulatory parity does not focus on its present position as the preeminent carrier in many urban markets. Block grants of spectrum, whether in 50-channel or 200-channel blocks, would likely go to Nextel, regardless of whether such grants were made pursuant to auction. Nextel's dominance is such that it stands as the only likely bidder in many, many instances. And, as logic and experience has shown consistently, the auctioneer reaps little from an auction to a single bidder.

The Commission will search its administrative record in vain for examples of the pre-selection environment which exists in the SMR marketplace. Prior to the employment of all past methods for selecting among competing applicants for market-based licenses, there existed no advantage among competitors. Cellular applicants stood in the same position. PCS applicants stood equal before the auctioneer's block. But the situation which exists in the SMR marketplace is not equal as among potential participants in the proposed auctions. Nextel enjoys such a significant advantage that the

Commission's proposal to employ auctions for MTA-based licensing is, for lack of a more appropriate word, silly. It is not parity.

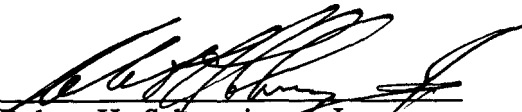
It is apparent, therefore, that the Commission's proposals will not serve the Commission in its attempts to employ auctions as a method of determining willingness to bring service. Instead, auctions would do little to assist the Commission in making a reasonable determination. What stands as a better indication of sincerity to bring service to the public is an operator's history of performing such duties in accord with their licensed authority. Were the Commission to review carefully Nextel's past performance, it would find that Nextel's customer base was purchased, its ESMR systems are not accepted by the public, and the bulk of its channels for which it has received authority within the last two years are unconstructed. This history belies Nextel's sincerity to bring a viable service to the public for which any demand exists or might exist. It further demonstrates that any auction process within the present environment would create greater opportunities for spectrum warehousing by Nextel, should be rejected.

Conclusion

For the foregoing reasons, Supreme respectfully requests that the Commission reject the proposals contained within its FNPRM and take such steps as are necessary and desirable to curtail the anti-competitive actions of large, publicly traded corporations which are detrimental to independent operators and the public.

Respectfully submitted,
SUPREME RADIO COMMUNICATIONS, INC.

By


Robert H. Schwaninger, Jr.

Brown and Schwaninger
Suite 650
1835 K Street, N.W.
Washington, D.C. 20006
202/223-8837

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